

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Banking and Insurance Committee

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BILL: CS/SB 2264

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Public Adjusters

DATE: March 17, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Green	Burgess	BI	<b>Fav/CS</b>
2.			JU	
3.				
4.				
5.				
6.				

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**I. Summary:**

This bill makes significant changes to the regulation of public adjusters. These changes provide greater oversight of public adjusters. The bill:

- Prohibits public adjusters from using deceptive or misleading statements in their advertisements or solicitations;
- Caps public adjusters' fees in supplemental or reopened cases at 30 percent and provides that the caps, in existing law, apply to the overall claim;
- Requires a public adjuster to make reasonable and necessary effort to ensure prompt notice of property loss claims to the insurer;
- Prohibits a public adjuster from obstructing an insurer from communicating directly with the insured;
- Defines the following terms: supplemental or reopened claims and written advertisement;
- Mandates that certain information be included in all public adjuster contracts;
- Requires public adjuster apprentices to complete additional hours of continuing education; and
- Decreases the window of time to file a claim from 5 years to 3 years.

This bill amends ss. 626.854, 626.8651 and 626.8796 and creates s. 626.70132 of the Florida Statutes.

## **II. Present Situation:**

Section 626.854, F.S., defines a public adjuster as any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third party claimant in negotiating or settling an insurance claim on behalf of the insured or third party. Public adjusters are employed exclusively by a policyholder who has sustained an insured loss. Public adjusters inspect the loss site, analyze the damages, assemble claim support data, review the insured's coverage, determine current replacement costs and confer with the insurer's representatives to adjust the claim.

As of June 2009, Florida had 2,914 licensed, bonded and trained public adjusters. They are licensed by the Department of Financial Services (DFS).

### **Task Force on Citizens Property Insurance Claims Handling and Resolution**

During the 2007 Special Session, the Legislature directed the Task Force on Citizens Property Insurance Claims Handling and Resolution (Task Force) to make recommendations to the legislative and executive branches relating to the appropriate handling, service and resolution of the open 2004/2005 hurricane claims of Citizens Property Insurance Corporation (Citizens). During review of Citizens' hurricane claims, the Task Force became aware of the impact that public adjusters have on the claims process. According to representatives of Citizens, of the 3,300 open claims which were in mediation or appraisal at least 90 percent of the insureds were represented by public adjusters.

The Task Force found that while the services of public adjusters can be beneficial to policyholders who have suffered a loss, the current laws do not adequately protect consumers from unscrupulous public adjusters. The Task Force heard testimony that some public adjusters were not properly trained or qualified to represent insureds. Also, some adjusters charged exorbitant fees which oftentimes were not apparent to insureds because such fees were not prominently displayed in the public adjuster contract. Stakeholders also testified that there was a need for an apprentice type program for public adjusters so that individuals would be knowledgeable and experienced when they became public adjusters.

### **2008 Legislation Enacted**

In 2008, laws were enacted to enforce how public adjusters will operate in Florida. The reforms arose out of the Task Force. The legislation does the following:

- Limits contingency fees, based on services provided, to 10 percent on catastrophic claims and 20 percent on non-catastrophic claims.
- Prohibits solicitations on Sundays.
- Limits solicitations to the hours between 8:00am and 8:00pm.
- Prohibits the public adjuster from entering into a contract with an insured until 48 hours after the occurrence of the loss.
- Prohibits a public adjuster from giving any monetary loan or advance to a client or prospective client, valued in excess of \$25.

- Requires all applicants to pass the public adjuster exam without exemptions, including those that have been previously licensed in another state.
- Requires continuing education courses.
- Requires all applicants for licensure to complete 12 months of employment as an apprentice to a licensed public adjuster before becoming a licensed adjuster.

A lawsuit, funded and supported by the Florida Association of Public Insurance Adjusters, has been filed in Leon County Circuit Court to challenge the constitutionality of the 48-hour solicitation law.<sup>1</sup> This case is currently being debated.

#### **Office of Program Policy Analysis & Government Accountability (OPPAGA) study:**

Legislation passed in the 2009 legislative session, directed the Office of Program Policy Analysis & Government Accountability (OPPAGA) to examine Florida's regulation of public insurance adjusters. OPPAGA's research showed that the number of licensed public adjusters in Florida has grown significantly in the last six years, and the incidence of complaints, regulatory actions, and allegations of fraud involving public adjusters is generally low. The Division of Insurance Fraud received 937 complaints about fraud related to public adjusters from insurers and others, investigated 269 of the complaints and made 31 arrests from 2004 to 2009.

OPPAGA's analysis of Citizens' claims data found that cases took longer to reach a settlement and received higher payments when insureds used public adjusters.

#### **Fee Limits:**

- A public adjuster may not charge a fee unless a written contract was executed prior to the payment of a claim.
- Public adjusters are prohibited from charging more than 20 percent of the insurance claims payment on non-hurricane claims and 10 percent of the insurance claims payment on hurricane claims for claims made during the first year after the declaration of the emergency. These fee caps apply only to residential property insurance policies and condominium association policies.
- There is no fee cap on re-opened or supplemental hurricane claims; however, the fee cannot be based on any payments made by the insurer to the insured prior to the time of the public adjuster contract.

#### **Contracts:**

- Insureds or claimants have 5 business days after the date on which the contract is executed to cancel a public adjuster's contract during a state of emergency declared by the Governor; insureds or claimants have 3 business days to cancel a contract as to claims involving non-emergencies.
- Public adjuster contracts must be in writing and must display an anti-fraud statement.

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<sup>1</sup> Case number 37 209 CA 003926 Fla. 2nd Cir., filed on October 6, 2009.

### III. Effect of Proposed Changes:

**Section 1** – Amends s. 626.854, F.S., relating to prohibitions against certain acts by public insurance adjusters. The bill specifies that the following statements, if made in a public adjuster’s advertising or solicitation, will be considered a deceptive insurance trade practice and thereby a violation of s. 626.9541, F.S.:

- A statement that invites a policyholder to submit a claim when there may not be covered damage to insured property or the claim has been fully adjusted and paid, by offering monetary inducement or stating that there is “no risk to submitting the claim”;
- A statement or use of a logo that would imply that the solicitation was distributed by a governmental agency;

The bill defines “written advertisement” as including only newspapers, magazines, flyers, brochures and mailers, and requires that all written advertisements have the following disclaimer:

“THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT.”

The bill provides that compensation for a reopened or supplemental claim cannot exceed 30 percent of the reopened or supplemental claim payment and cannot exceed the caps in existing law for the overall claim.

The bill provides that the public adjuster must make all reasonable efforts to ensure that prompt notice of a claim is given to the insurer, that the public adjuster’s contract is timely provided, that the property is timely made available for the insurer’s inspection, and that the insurer is given reasonable opportunity to interview the insured directly. If these conditions are met and the insurer determines that coverage exists, the insurer shall timely meet with the public adjuster in an effort to reach agreement as to the scope of the covered loss. The public adjuster cannot obstruct an insurer from communicating directly with the insured or respond to a pending claim. The public adjuster may be present for the insurer’s inspection of the damage, but the lack of availability of the public adjuster cannot delay the access of the insurer.

The bill provides that a licensed contractor cannot adjust a claim for an insured without holding a public adjuster’s license. This provision, however, does not prohibit a contractor, if asked by the homeowner or insurer, from discussing the bid for repair of the damaged property, as long as the contractor charges only the usual customary fees applicable for the work to be performed. A subcontractor may discuss a bid only for the area of work to be performed by the subcontractor.

**Section 2** – Amends s. 626.8651, F.S., relating to public adjuster apprentices. The bill requires a public adjuster apprentice to complete a minimum of 8 hours of continuing education, 2 hours of which must be ethics.

**Section 3** – Amends s. 626.8796, F.S., relating to public adjuster contracts. The bill requires the public adjuster contract to include:

- The full name, business address and license number of the public adjuster;
- The full name of the public adjusting firm;
- The insured's full name and address;
- A brief description of the loss;
- The percentage compensation of the public adjuster's services;
- The type of claim; and
- The signatures of the public adjuster and the insured;

A copy of the contract must be sent to the insurer within 30 days of its execution.

**Section 4** – Creates s. 626.70132, F.S., which bars any windstorm or hurricane claim, supplemental claim, or reopened claim under personal lines residential coverage that was given to the insurer more than 3 years after the hurricane first made landfall or the windstorm caused the covered damage. The bill defines “supplemental or reopened claim” to be a claim for recovery of additional payments for losses from the same hurricane or windstorm for which the insurer has already paid pursuant to an initial claim.

**Section 5** – This act shall take effect July 1, 2010.

**Other Potential Implications:**

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 17, 2010:**

- Requires a public adjuster's contract to include the following:
  - license number of the public adjuster;
  - brief description of the insured's loss;
  - percentage of compensation for the public adjuster's services;
  - type of claim, including an emergency claim, non-emergency claim, or supplemental claim;
- Defines criteria for deceptive or misleading statements on advertisement or solicitation and defines "written advertisement";
- Provides that compensation for a reopened or supplemental claim may not exceed 30 percent of the reopened or supplemental claim payment and may not exceed the cap for the overall claim, inclusive of the supplemental claim;
- Provides notification of property loss to insurers by public adjusters;
- Provides communication requirements between public adjusters and insurers;
- Prohibits public adjusters from obstructing communications between insured and insurers;
- Prohibits licensed contractors from adjusting a claim on behalf of an insured without being a licensed public adjuster;
- Limits subcontractors to discuss bids encompassing only their specific specialty for which they are qualified; and
- Requires continuing education for public adjuster apprentices;
- Removes definition of "solicit" or "solicitation";
- Removes prohibition on contacting prospective customers;
- Removes requirements on unsolicited written communications;
- Removes fee structure; and
- Removes definition of "claim valuation".

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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